

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 05-10403DPW

LLOYD F. AUDETTE,)
Plaintiff,)
)
V.)
)
UMASS CORRECTIONAL HEALTH,)
A Commonwealth Medicine Program,)
Defendant, and)
)
DEPARTMENT OF CORRECTONS)
Kathleen M. Denney, Commissioner,)
Defendant,)
)

DEFENDANT, AUGUSTIN ENAW'S, M.D.'S
ANSWER TO FIRST AMENDED COMPLAINT AND JURY TRIAL DEMAND

FIRST DEFENSE

The Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Defendant, Augustin Enaw, M.D. (the "Defendant"), responds to the allegations of the Plaintiff's Amended Complaint as follows:

INTRODUCTION

This paragraph calls for a conclusion of law, and thus, no response is required. To the extent a response is deemed necessary, the Defendant denies any and all allegations of wrongdoing.

PARTIES

1. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent a response is deemed necessary, the Defendant denies any and all allegations of wrongdoing.

2. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent a response is deemed necessary, the Defendant denies any and all allegations of wrongdoing.

3. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent that a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

4. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent that a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

5. The defendant admits that he is a physician licensed to practice medicine in the Commonwealth of Massachusetts, and that he provides medical care to certain inmates at the SBCC. The defendant denies the remaining allegations set forth in this paragraph and calls upon plaintiff to prove same.

6. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent that a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

7. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent that a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

JURISDICTION AND VENUE

8. This paragraph calls for a conclusion of law, and thus, no response is required. To the extent a response is deemed necessary, the Defendant denies any and all allegations of wrongdoing.

9. This paragraph calls for a conclusion of law, and thus, no response is required. To the extent a response is deemed necessary, the Defendant denies any and all allegations of wrongdoing.

FACTUAL ALLEGATIONS

10. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and calls upon plaintiff to prove same. To the extent this paragraph alleges any negligence of any wrongdoing on the part of this defendant, the allegations are denied.

11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and calls upon plaintiff to prove same. To the extent this paragraph alleges any negligence of any wrongdoing on the part of this defendant, the allegations are denied.

12. The defendant denies the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

13. The defendant denies the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

14. The defendant denies the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

15. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

16. The defendant denies the allegations set forth in this paragraph of Plaintiff's Amended Complaint.

17. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

18. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

19. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

20. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

21. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

22. This paragraph does not set forth any factual allegations against this defendant and thus, no response is required. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

23. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

24. The defendant admits that Mr. Audette was referred to Lemuel Shattuck Hospital on or about April 19, 2005, where he was examined by a medical of staff in the eye clinic. The defendant is without knowledge or information sufficient to form a belief as the truth of the remaining allegations set forth in this paragraph of plaintiff's Amended Complaint, and calls upon plaintiff to prove same.

25. The defendant admits that Mr. Audette was referred to the New England Eye Center on or about April 21, 2005 for consultation. The defendant is without knowledge or information sufficient to form a belief as the truth of the remaining allegations set forth in this paragraph of plaintiff's Amended Complaint, and calls upon plaintiff to prove same.

26. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

27. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

28. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

29. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

30. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

31. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

32. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

33. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

34. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence of any wrongdoing on the part of this defendant, the allegations are denied.

35. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

36. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

37. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

38. The defendant denies the allegations set forth in this paragraph of plaintiff's Amended Complaint.

39. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

40. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

41. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

42. The defendant denies the allegations set forth in this paragraph of plaintiff's Amended Complaint.

43. The defendant admits that on or about February 16, 2005, the plaintiff filed the above-captioned action in the United States District Court for the District of Massachusetts. The defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in this paragraph, and calls upon plaintiff to prove same. To the extent this paragraph alleges any negligence or wrongdoing on the part of this defendant, the allegations are denied.

44. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

45. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence or any wrongdoing on the part of this defendant, the allegations are denied.

46. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

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49. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

50. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

51. This paragraph does not set forth any factual allegations against the defendant, and thus, no response is required. To the extent a response is deemed necessary, the defendant denies any and all allegations of wrongdoing.

52. The defendant denies the allegations set forth in this paragraph of plaintiff's Amended Complaint.

53. The defendant denies the allegations set forth in this paragraph of plaintiff's Amended Complaint.

54. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph. To the extent this paragraph alleges any negligence of any wrongdoing on the part of this defendant, the allegations are denied.

55. The defendant denies the allegations set forth in this paragraph of plaintiff's Amended Complaint.

COUNT I

(Deliberate Indifference and Civil Conspiracy in Violation of Federal Constitutional Rights – Against Defendants, Enaw, Hazard, and Black)

56. The defendant repeats and reavers his responses in Paragraph 1-55 as if fully and separately set forth herein and at length.

57. The defendant denies the allegations set forth in this paragraph of the plaintiff's Amended Complaint.

58. The defendant denies the allegations set forth in this paragraph of the plaintiff's Amended Complaint.

59. The defendant denies the allegations set forth in this paragraph of the plaintiff's Amended Complaint.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to judgment as requested or to recovery in any amount.

COUNT II

**(Retaliation and Civil Conspiracy in Violation of the Federal Constitutional Rights
-Against Defendants Hazard and Black**

60. The defendant repeats and reavers his responses in Paragraph 1-59 as if fully and separately set forth herein and at length.

61. The defendant denies the allegations set forth in this paragraph of the plaintiff's Amended Complaint.

62. The defendant denies the allegations set forth in this paragraph of the plaintiff's Amended Complaint.

63. The defendant denies the allegations set forth in this paragraph of the plaintiff's Amended Complaint.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to judgment as requested or to recovery in any amount.

COUNT III

**(Violation of Federal and State Constitutional Rights for Failure to Train and Supervise
-Against Defendants Dennehy and Russo, in their individual capacities as to claims for
monetary relief, and in their official capacities as to claims for prospective injunctive relief)**

64. The defendant repeats and reavers his responses in Paragraph 1-63 as if fully and separately set forth herein and at length.

65. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

66. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

67. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to judgment as requested or to recovery in any amount.

COUNT IV

(Violation of Federal and State Constitutional Rights for Failure to Train and Supervise – Against Defendants Dennehy and Russo, in their individual capacities as to claims for monetary relief, and in their official capacities as to claims for prospective injunctive relief)

68. The defendant repeats and reavers his responses in Paragraph 1-67 as if fully and separately set forth herein and at length.

69. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

70. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

71. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

72. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

73. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to judgment as requested or to recovery in any amount.

COUNT V

(Violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12132 et seq. - Against All Defendants)

74. The defendant repeats and reavers his responses in Paragraph 1-73 as if fully and separately set forth herein and at length.

75. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

76. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

77. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

78. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

79. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to judgment as requested or to recovery in any amount.

COUNT VI
(Negligence –Against All Defendants)

80. The defendant repeats and reavers his responses in Paragraph 1-79 as if fully and separately set forth herein and at length.

81. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

82. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

83. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

WHEREFORE, the Defendant denies that the Plaintiff is entitled to judgment as requested or to recovery in any amount.

COUNT VII
(Intentional Infliction of Emotional Distress –Against All Defendants)

84. The defendant repeats and reavers his responses in Paragraph 1-83 as if fully and separately set forth herein and at length.

85. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

86. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

87. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

88. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

WHEREFORE, the Defendant denies that the Plaintiffs are entitled to judgment as requested or to recovery in any amount.

COUNT VIII

(Negligent Infliction of Emotional Distress –Against All Defendants)

89. The defendant repeats and reavers his responses in Paragraph 1-88 as if fully and separately set forth herein and at length.

90. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

91. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

92. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

93. To the extent that the allegations in this paragraph of the plaintiff's Amended Complaint are intended to apply to this defendant, they are denied.

WHEREFORE, the Defendant denies that the Plaintiffs are entitled to judgment as requested or to recovery in any amount.

REQUEST FOR RELIEF

The defendant repeats and reavers his responses in Paragraph 1-93 as if fully and separately set forth herein and at length.

(a-g) To the extent the allegations in this paragraph of the plaintiff's complaint are intended to apply to this defendant, they are denied. The defendant denies that the plaintiff is entitled to any of the relief requested in this portion of his complaint.

THIRD DEFENSE

The Defendant denies that the plaintiff is entitled to any of the relief requested in his Amended Complaint.

FOURTH DEFENSE

By way of affirmative defense, the Defendant says that if the plaintiff suffered injuries or damage, as alleged, such injuries or damage were caused by someone for whose conduct this Defendant was not and is not legally responsible.

FIFTH DEFENSE

By way of affirmative defense, the Defendant says that the action is barred by the applicable statute of limitations.

SIXTH DEFENSE

By way of affirmative defense, the Defendant says that the action should be dismissed because of lack of jurisdiction over the Defendant.

SEVENTH DEFENSE

By way of affirmative defense, the Defendant says that the plaintiff, by her conduct and actions and/or the conduct and actions of her agents and servants, is estopped to recover any judgment against the Defendant.

EIGHTH DEFENSE

By way of affirmative defense, the Defendant says that the plaintiff, by her conduct and actions and/or the conduct and actions of her agents and servants, have waived any and all rights she may have had against the Defendant, and, therefore, the plaintiff cannot recover in this action.

NINTH DEFENSE

By way of affirmative defense, the Defendant says that the plaintiff consented to the Defendant's alleged conduct, acts and statements and, therefore, the plaintiffs cannot recover.

TENTH DEFENSE

By way of affirmative defense, the Defendant says that it is protected from liability by qualified immunity for any of the matters raised in the plaintiff's Amended Complaint.

ELEVENTH DEFENSE

By way of affirmative defense, the Defendant says that the plaintiff failed to properly present his claim pursuant to the requirements of the Massachusetts Tort Claims Act M.G.L. c. 258 § 4.

TWELFTH DEFENSE

By way of affirmative defense, the Defendant says that the plaintiff failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997 (e)(a).

WHEREFORE, the Defendant requests that all counts of the Amended Complaint be dismissed and that it be awarded costs, attorney's fees and such further relief as this Court deems appropriate.

JURY TRIAL DEMAND

The Defendants demand a trial by jury as to all issues to which it is entitled as a matter of right.

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each (other) party by mail on this 19th day of **September**, 2005

/s/ James A. Bello

James A. Bello / Lisa R. Wichter

Respectfully submitted,
The Defendant,
AUGUSTIN ENAW, M.D.
By its attorneys,

/s/ James A. Bello

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